

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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DOC #:
DATE FILED: 01 JUL 2009

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MOHAMED SALEH, MOHAMED	x	Civil Action No. 09-cv-4016 (PAC)
ABOUSAMRA and SAMIR CHENAN,	:	
Individually and on Behalf of All Others	:	
Similarly Situated,	:	
 Plaintiffs,		
 vs.		
SHOE MANIA LLC, SHOE MANIA DC	:	
INC., SHOE MANIA HOLDING INC., SHOE	:	
MANIA IX LLC, SHOE MANIA V LLC,	:	
SHOE MANIA VII LLC, SHOE MANIA,	:	
INC., SHOE MANIA V, INC., SHOE MANIA	:	
XI LLC, SHOEMANIA CORP, MARK	:	
COHEN, ISAAC COHEN, "SAMMY," and	:	
JOHN DOES #1-10, Jointly and Severally,	x	
 Defendants.		

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**[PROPOSED] ORDER ON PLAINTIFFS' MOTION TO CONDITIONALLY CERTIFY  
A FAIR LABOR STANDARDS ACT COLLECTIVE ACTION AND AUTHORIZE  
NOTICE TO BE ISSUED TO ALL PERSONS SIMILARLY SITUATED**

THIS MATTER came before the Court on Plaintiffs' Motion to Conditionally Certify a Fair Labor Standards Act Collective Action and Authorize Notice to be Issued to All Persons Similarly Situated and related relief, and the Court, having reviewed the said motion, the June 29, 2009 letter and the case file herein, and now being sufficiently advised in the premises,

HEREBY ORDERS that Plaintiffs' Motion is GRANTED, and FURTHER ORDERS that:

1. The collective action notice entitled "NOTICE OF LAWSUIT AND OPPORTUNITY TO JOIN," attached to the June 29, 2009 letter is hereby approved for mailing to potential plaintiffs;
2. The collective class of potential plaintiffs in this matter shall consist of all current and former shoe salespersons who worked for Defendants at any time from June 29, 2006 to the entry of judgment in this action; and

3. Defendants shall provide to Plaintiffs the names and last-known addresses of all potential plaintiffs who worked in the above positions from on or after June 29, 2006 to date no later than five (5) days after the date of this Order. This information shall be supplied in paper form, and also digitally in one of the following formats: Microsoft Excel; Microsoft Word; or Corel WordPerfect; and

4. Plaintiffs shall mail the notice of collective action to all potential plaintiffs no later than five (5) days following the defendants' disclosure of the names and last-known addresses of the potential plaintiffs; and

5. If any notice to any potential plaintiff is returned as undeliverable, Plaintiffs' counsel is permitted to mail the notice to such potential plaintiff again at any other address he may determine is appropriate.

6. Plaintiffs' counsel may issue a follow-up reminder to the potential plaintiffs approximately forty (40) days following the date of the initial mailing; and

7. All potential plaintiffs must opt-in no later than sixty-five (65) days following the date of mailing of the collective action notice by returning the executed form entitled "Consent to Become Party Plaintiff" to Plaintiff's counsel no later than sixty (60) days from the date of mailing. Plaintiffs' counsel shall thereupon promptly file such executed consents with the Court.

DATED this 6 day of July, 2009

  
THE HONORABLE PAUL A. CROTTY, U.S.D.J.

PELTON & ASSOCIATES PC

ATTORNEYS AT LAW

111 BROADWAY, 9<sup>TH</sup> FLOOR, NEW YORK, NY 10006

PHONE: (212) 385-9700 | FAX: (212) 385-0800 | WEBSITE: [www.peltonlaw.com](http://www.peltonlaw.com)

BRENT E. PELTON  
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May 21, 2009

FILE NO.  
1372-01

VIA EMAIL (Marlon\_Ovalles@nysd.uscourts.gov)  
AND FACSIMILE

Honorable Paul A. Crotty  
United States District Court  
Southern District of New York  
500 Pearl Street  
New York, New York 10007

Re: *Saleh v. Shoe Mania LLC, et al.*  
Civil Action No. 09-cv-4016 (PAC)

Dear Judge Crotty:

This letter is written jointly by counsel for plaintiffs and defendants in the above-referenced matter. Plaintiffs filed their Motion to Conditionally Certify a Fair Labor Standards Act Collective Action and Authorize Notice to be Issued to all Persons Similarly Situated on June 10, 2009. Rather than oppose the motion, the parties have negotiated the form of notice acceptable to all parties. Therefore, the parties respectfully request that the Court:

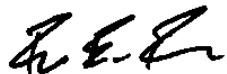
1. Grant Plaintiffs' Motion to Conditionally Certify a Fair Labor Standards Act Collective Action on behalf of current and former shoe salespeople who worked for Defendants within the past three (3) years (the "Class");
2. Order defendants to provide plaintiffs' counsel with a list of the Class members' names, addresses and, where available, email addresses within five (5) business days from the date of the Court's order;
3. Authorize plaintiffs to send the agreed-upon notice, attached hereto, to the Class members within five (5) business days of receipt of the list of Class members;
4. Authorize plaintiffs' counsel to send a brief reminder letter to the Class members approximately fifteen (15) days from the date the opt-in forms must be returned to plaintiffs' counsel;

Pelton & Associates PC  
June 29, 2009  
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5. In the event that notice is returned as undeliverable, permit plaintiffs' counsel to such potential plaintiff again at any other address;

We appreciate your attention to this matter. Should you have any questions regarding this request, please feel free to contact the undersigned.

Very truly yours,



Brent E. Pelton, Esq. of  
PELTON & ASSOCIATES PC

Very truly yours,



Justin Reilly, Esq. of  
Greenberg & Associates, P.C.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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X

MOHAMED SALEH, MOHAMED : Civil Action No. 09-cv-4016 (PAC)  
ABOUSAMRA and SAMIR CHENAN, :  
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Plaintiffs, :  
vs. :  
SHOE MANIA LLC, SHOE MANIA DC :  
INC., SHOE MANIA HOLDING INC., SHOE :  
MANIA IX LLC, SHOE MANIA V LLC, :  
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COHEN, ISAAC COHEN, "SAMMY," and :  
JOHN DOES #1-10, Jointly and Severally, :  
Defendants. X

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**NOTICE OF LAWSUIT WITH OPPORTUNITY TO JOIN**

- TO:** All current and former shoe salespersons of Shoe Mania Inc.. and its corporate owners and/or affiliates ("Shoe Mania") who worked for Shoe Mania any time on or after June 29, 2006.
- RE:** Opportunity to join a lawsuit asserting violations of the Fair Labor Standards Act against Shoe Mania for its alleged failure to pay regular wages and overtime compensation for work performed in excess of forty (40) hours per week.

## **I. INTRODUCTION**

The purpose of this notice is to inform you of the existence of a collective action lawsuit in which you potentially are "similarly situated" to the named plaintiffs, to advise you of how your rights may be affected by this lawsuit and to instruct you on the procedure for participating in this lawsuit. The lawsuit at issue was filed on April 23, 2009 against defendant Shoe Mania in the United States District Court for the Southern District of New York. The plaintiffs allege that the defendants violated the Federal Fair Labor Standards Act by not paying eligible employees' wages for all hours worked and time and one-half their regular hourly rate, or overtime compensation, for all hours worked in excess of forty (40) hours per week. The lawsuit is seeking back pay and double liquidated damages, as well as costs and attorneys' fees. Shoe Mania denies the plaintiffs' allegations and deny that it is liable to the plaintiffs for any of the back pay, damages, costs or attorneys' fees sought.

## **II. COMPOSITION OF THE COLLECTIVE ACTION CLASS**

The plaintiffs seek to sue on behalf of themselves and on behalf of all other employees with whom they are similarly situated. Specifically, under the federal law, the plaintiffs seek to sue on behalf of themselves and all other similarly situated current and former shoe salespersons who worked for Shoe Mania at any time within the past three years.

## **III. YOUR RIGHT TO PARTICIPATE IN THE LITIGATION**

If you fit within the definition above and worked for Shoe Mania within the past three years, you may join this case. In order to join this case (that is, to "opt-in"), you must sign the attached "Consent to Become a Party Plaintiff" form attached and return it to the lawyers who are representing the plaintiffs no later than sixty (60) days after the date of this notice. If you sign and return the attached form, you will be represented by plaintiffs' counsel at the following address:

PELTON & ASSOCIATES, PC  
111 Broadway, Suite 901  
New York, New York 10006  
Telephone: (212) 385-9700  
Facsimile: (212) 385-0800  
Email: [pelton@peltonlaw.com](mailto:pelton@peltonlaw.com)

Your form must be sent to plaintiffs' counsel at the above address in sufficient time to have plaintiffs' counsel file it with the federal court on or before the date that is 65 days from \_\_\_\_\_ [Insert the date 65 days after the date of mailing of the notice] If you fail to return the Consent to Become a Party Plaintiff form to the plaintiffs' counsel in time for it to be filed with the federal court on or before the above deadline, you may not be able to participate in this lawsuit. Furthermore, you can join this lawsuit by counsel of your own choosing. If you do so, your attorney must file an "opt-in" consent form by \_\_\_\_\_ with the Clerk of the Court. The address of the Court is United States District Court, Southern District of New York, 500 Pearl Street, New York, New York 10007.

#### **IV. EFFECT OF JOINING THIS ACTION**

If you choose to join in this case, you will be bound by the Judgment, whether it is favorable or unfavorable. The attorneys for the collective action plaintiffs are being paid on a contingency fee basis, which means that if there is no recovery there will be no attorneys' fees. If there is a recovery, the attorneys for the collective action will receive a part of any settlement obtained or money judgment entered in favor of all members of the collective action. If you sign and return the Consent to Become a Party Plaintiff form attached to this Notice, you are agreeing to designate the collective action representatives as your agents to make decisions on your behalf concerning the litigation, the method and manner of conducting this litigation, the entering of an agreement with plaintiffs' counsel concerning attorneys' fees and costs, and all other matters pertaining to this lawsuit. These decisions and agreements made and entered into by the representative plaintiffs will be binding on you if you join this lawsuit. However, the Court has retained jurisdiction to determine the reasonableness of any contingency agreement entered into by the plaintiffs with counsel, and to determine the adequacy of the plaintiffs' counsel. If you join this lawsuit, you may be asked to appear for depositions, respond to written discovery requests and testify at trial.

#### **V. TO STAY OUT OF THE LAWSUIT**

If you do not wish to be part of the lawsuit, you do not need to do anything. If you do not join the lawsuit, you will not be part of the federal claims portion of this case in any way and will not be bound by or affected by the result (whether favorable or unfavorable). Your decision not to join this case will not affect your right to bring a similar case on your own at a future time.

**VI. NO RETALIATION PERMITTED**

Federal law prohibits Shoe Mania from taking any retaliatory action against any person, including current employees, who joins this case. Shoe Mania is prohibited by law from retaliating against you for exercising your rights under the Fair Labor Standards Act.

**VII. YOUR LEGAL REPRESENTATION IF YOU JOIN**

If you choose to join this suit and agree to be represented by the named plaintiffs through their attorney, your counsel in this action will be:

PELTON & ASSOCIATES, PC  
111 Broadway, Suite 901  
New York, New York 10006  
Telephone: (212) 385-9700  
Facsimile: (212) 385-0800  
Email: [pelton@peltonlaw.com](mailto:pelton@peltonlaw.com)

**VIII. FURTHER INFORMATION**

Further information about this Notice, the deadline for filing a Consent to Become a Party Plaintiff, or answers to questions concerning this lawsuit may be obtained by contacting Plaintiffs' counsel: (a) by telephone at (212) 385-9700; (b) email at [pelton@peltonlaw.com](mailto:pelton@peltonlaw.com); or (c) in writing at Pelton & Associates, PC, 111 Broadway, Suite 901, New York, New York 10006. Shoe Mania is represented by:

Neil H. Greenberg & Associates, P.C.  
900 Merchants Concourse, Suite 314  
Westbury, New York 11590  
(516) 228-5100  
[Justin@NHGLaw.com](mailto:Justin@NHGLaw.com)

THIS NOTICE AND ITS CONTENTS HAVE BEEN AUTHORIZED BY THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, THE HONORABLE PAUL A. CROTTY, U.S.D.J. THE COURT HAS TAKEN NO POSITION IN THIS CASE REGARDING THE MERITS OF THE PLAINTIFFS' CLAIMS OR OF THE DEFENDANT'S DEFENSES.

DO NOT TELEPHONE THE COURT REGARDING THIS NOTICE.

DATED: \_\_\_\_\_, 2009